HON'BLE SRI JUSTICE SAMUDRALA GOVINDARAJULU

S.A.No.591 of 1998

JUDGMENT:

While admitting the second appeal, the learned Judge observed that grounds (c) and (g) of the grounds of appeal raised substantial questions of law herein. They are as follows:

c) Whether the appellate Court is right in reversing the well considered judgment of the trial Court which decreed the suit for permanent injunction and declaration of title over suit property marked as ABCD in the plaint plan basing on cogent reasons and findings after due consideration of the evidence adduced by the parties and as per law?

g) Whether the appellate Court is right in allowing the appeal on the basis of the report submitted by the Commissioner for 3rd time in Ex.C.6, ignoring the earlier two reports and also the findings of the trial Court?

2. The plaintiff is the appellant in this second appeal. He filed the suit for declaration of his right and title to the plaint schedule site shown as ABCD in the plaint plan and for permanent injunction restraining the defendant from

interfering with his possession thereof on the ground that ABCD is part of the site owned by the plaintiff. On the other hand, the defendant/respondent contends that ABCD is part of the site belonging to him and that even otherwise he acquired title to it by adverse possession. The trial Court, after trial, decreed the plaintiff's suit; and on appeal by the defendant, the lower appellate Court allowed the appeal and set aside decree passed by the trial Court.

3. In this second appeal, it is contended by the appellant's counsel that the defendant has failed to prove his title to the disputed ABCD portion of the plaint plan either from his sale deed or by way of adverse possession. It is pointed out that the defendant is found to be in possession of excess site of the length of 5 ½ feet with reference to his title deed Ex.B.1, whereas the plaintiff is also found to be in possession of excess extent of site of the width of 10 ½ feet. According to the plaintiff, he encroached municipal site of the width of 11 feet towards north of his property; whereas the defendant contends that he encroached site of the width of 5 ½ feet towards

his south being drainage site. Both the parties in order to cover up their excess sites than to which they are entitled as per the documents, plead alleged encroachments. It is pointed out by the appellant's counsel that Exs.A.19 and A.20 encroachment register extract and certificate are filed. Ex.A.20 is only certificate showing payment of encroachment fees by the plaintiff. Payment of encroachment fees at best may indicate existence of some encroachment, but it is not a proof of exact extent of encroachment and measurements of the encroachment. In my opinion, Commissioner's reports and plans Exs.C.1 to C.6 do not decide title of the respective parties for the disputed site of ABCD.

4. It is the plaintiff's contention that ABCD is part of the entire site of QNCD belonging to the plaintiff. According to the plaintiff, MNCC1 is the site covered by Ex.A.3 registered sale deed dated 02.08.1940 in favour of the plaintiff's father Gangi Reddy. No title deed for QMC1D in favour of the plaintiff is filed. According to the plaintiff, QMC1D portion of the property belonged to his maternal grand mother's brothers by names Ramaiah and Munaiah, each of them being entitled to half share

therein. The plaintiff further contends that after death of Ramaiah, Munaiah was enjoying the entire property including Ramaiah's share and that Munaiah during his life time gifted the property to the plaintiff and put him in possession. No gift deed of Munaiah is filed, perhaps because of the reason that the said gift is not evidenced by any document. An oral gift said to have been made by Munaiah in favour of the plaintiff cannot convey any title to the plaintiff for the said MQDC1 property. The said property includes AA1C1D which again is part of ABCD. The plaintiff has miserably failed to prove his title to AA1C1D portion of the disputed site of ABCD. The other portion out of ABCD is A1BCC1 which is stated to be part of the property covered by Ex.A.3. While claiming title to that portion of the disputed site ABCD, the plaintiff pleads that he has encroached into 11 feet width of site towards north belonging to the municipality. As pointed out earlier, there is no material to show the extent of encroachment by the plaintiff though there is some evidence regarding some encroachment made by the plaintiff for which he paid encroachment fees as per Exs.A.19 and A.20. Simply because the defendant failed to prove his

entitlement for ABCD portion of the disputed site as per his title deed Ex.B.1, the plaintiff is not going to have decree in his favour on the basis of infirmities in the defendant's case. The plaintiff has to stand or fall on merits of his own case. In view of my discussion of the matter on record, this Court has no hesitation to come to the conclusion that Commissioner's reports and plans as well as measurements did not establish title of any of the parties to the disputed site and that in the absence of the plaintiff proving his title to the entire ABCD portion of the disputed site, the lower appellate Court is justified in reversing the decree and judgment passed by the trial Court. Both the substantial questions of law framed by the learned Judge at the time of admission are answered accordingly.

5. In the result, the second appeal is dismissed with costs.

SAMUDRALA GOVINDARAJULU,J

Dt.13th February, 2013

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